

IN THE UNITED DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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Tony Fountain #152157

2007 JUN 14 A 9:00

Plaintiff,

Civil Action No. 2:06-CV-548-
M.H.T.

VS.

DR. PEASANT, et al,
Defendants.

PLAINTIFF'S REQUEST THE TRANSFERRING
OF THE ABOVE STYLED ACTION, TO THE
ELEVENTH CIRCUIT COURTS OF APPEALS
PURSUANT TO 28 U.S.C. § 1631

Comes now, Tony Fountain, by and through himself herein moves this Honorable Court, pursuant to 28 U.S.C. § 1631, to issue an order transferring the above styled Cause to the Eleventh Circuit Court of Appeals, on issue whether or not in forma pauperis status confers jurisdiction upon a Court, and on whether or not a Magistrate Judge lack authority to decide a dispositive matter without review and adoption of the District Court Judge adoption of the Magistrate order of August 2 2006. Plaintiff's asserts the following facts in support of this motion to wit:

- 1). Plaintiff's contends on August 2 2006 the Magistrate Judge (Susan Russ Walker)

issued an order Granting him in forma pauperis status and ordered plaintiff to pay the sum of \$ 350.00 filing fee's on or before August 10 2006; or his action Challenging his Confinement and Conditions would be dismissed for failure to pay the afore said filing fee's. On or about April 26, 2007, plaintiff's learned that the Magistrate Judge (Susan Russ Walker) order ~~was~~ of August 2 2006 was made without being reviewed and adopted by the District Court Judge or with the consent of the parties. 28 U.S.C. § 636(C).

On April 26, 2007, plaintiff's filed a Motion Requesting the United States District Court For the Middle District of Alabama to void the Magistrate Judge order of 8-2-06. On May 29 2007, the district Court Judge Myron H. Thompson denied my Motion, and attempted to clarify his and/or Magistrate as being a non dispositive matter under Rule 72 (d) F.R.Civ.P. plaintiff's filed his objection within the 10 days time limitation, which was overruled on June 7, 2007. In which the above styled Motion Requesting transfer to the Eleventh Circuit Court of Appeals was made to cure a jurisdiction issue on the grounds of whether or not a Magistrate Judge can decide a dispositive ~~order~~ matter, absent review and adoption of the District Court Judge's adoption of the Magistrate Report or Recommendation. 28 U.S.C. § 636(b).

OR without consent of the parties pursuant to 28 U.S.C. § 636 (C).

2). Plaintiff's stresses the point that a District Court judge must decide any and all dispositive matter before it, United States v. Raddatz 447 U.S. 667, 65 L.Ed. 2d. 424, 100 S Ct 2406 and not a Magistrate judge (Susan Russ Walker). And that a decision whether not to deny or grant a party in forma pauperis status is what confers jurisdiction upon the court to act. Ex parte St. John 805 So. 2d. 684 (Ala. 2001).

3). And the facts that a court that acts without jurisdiction, orders, judgments ect is a nullity. Klugh v. U.S.D.C.S.C 620 F. Supp. 892 at 901.

Plaintiff's further contends, the Magistrate judge (Susan Russ Walker) of August 2, 2006, was never reviewed nor adopted by the District Court judge, 28 U.S.C. § 636(b), nor was it made with consent of the parties pursuant to 28 U.S.C. § 636 (C). Tripathi v. Rison 847 F.2d. 548 (CA9, 1988); Ambrose v. Welch 729 F.2d. 1084 (6th Cir. 1984). A Magistrate judge has no authority's to issue a dispositive order, denying or granting a plaintiff in forma pauperis status, absent compliance with section 636 (C).

Wherefore, plaintiff prays that this motion to transfer this matter of jurisdiction to the Eleventh Circuit Court of Appeals for cure of jurisdiction on the issues of whether or not a United States District Court Magistrate Judge has authority to deny or grant in forma pauperis status to a parties. And whether or not the United States District Court for the Middle District of Alabama had jurisdiction after such an authorization of the Magistrate to decide a dispositive issue, be granted in all respects and as law and justice requires.

Done this 12th day of June 2007.

Toby Fountain, PRO SE

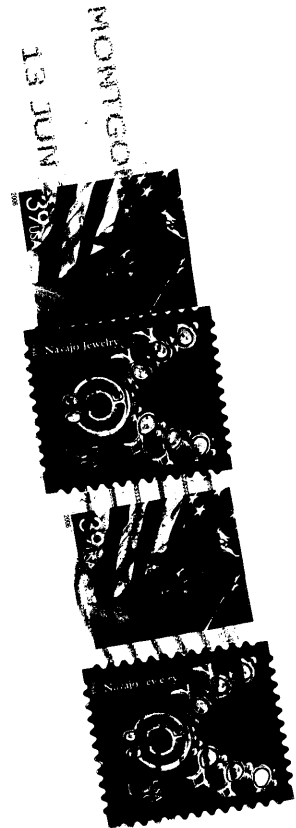
CERTIFICATE OF SERVICE

I hereby, certify, that I have served a copy of the foregoing addressed as follows: Office of The Attorney General, 11th South Union Street, Montgomery, AL 36130, And the office of Portefield, Harper, Mills & Morrow, P.C. 22 Inverness Center Parkway, Suite 600, P.O. Box 530790 Birmingham, AL 35253-0790, by placing the same in the United States mail on this 12th day of June 2007.

Sincerely

Tony Fountain #152157
 Station Corrections Facility
 P.O. Box 36, B1-934
 Elmore, AL 36025

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